

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 411 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHANBHAI KALAB HAI MALI

Versus

ASSISTANT COLLECTOR

Appearance:

MR KB PUJARA for Petitioner

S.J.Dave, AGP for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 05/07/96

ORAL JUDGEMENT

Mohanlal Kalabhai Mali a resident of village Mitha, Taluka Deodar, District Banaskantha has filed the present petition under article 227 of the Constitution of India against the order passed by the respondents nos 1 and 2 in Consolidation Case No. 7 of 1983.

2. The land of original survey onumber 89 was converted into block no.83 of village Mitha under a scheme iunder the provisions of Bombay Prevention of Fragmentation and Consolitation of Holdings Act 1947. (herein after referred to as the said Act)Said block was held by one Koli Kanji Kala in the year 1968 and after the said block of land admeasuring 5 acres and 20 gunthas was sold by him by a registered sale deed in favour of Mohanlal Fulchand Thakkar. An entry of the said sale deed was also made in the record of rights by mutation entry no. 506 on 1.3.68. Thereafter, said Mohanlal Fulchand Thakkar sold the same land which was acquired by him under the sale deed dated 15.1.68 in favour of the present petitioner by registered sale deed of 30.6.75. Since the date of the said transaction , the petitioner is in occupation and possession of the said land. The Assistant Collector of Radhanpur issued notice dated 5.2.83 to the present petitioner contending therein that a transaction between on account of the sale in question in favour of Mohanlal Fulchand Thakkar was in contravention of the provisions of section 31 of the said Act. After giving an opportunity of being heard to the petitioner, he passed an order on 20.2.84 holding that the transfer in favour of the said Mohanlal Fulchand Thakkar was hit by the provisions of section 31 of the said Act and an order to return of the land to the original holder was also passed. Being aggrieved by the said decision, the petitioner preferred a Revision before the respondent no.2 who had also agreed with the decision of Asstt.Collector The petitioner has therefore, come before this Court.

3. It is the contention of the petitioner that the action taken against him him by respondent no.1, Assisitant Collector of Radhanpur was not at all justified in view of the provisions of the said Act. It is also further contended that said action was also belated and after a lapse of time and the petitioner ihas made a lot of improvements in the land by spending thousands of rupees and therefore, said action deserves to be set aside.

4. In order to consider the claim of the petitioner. it is necessary to see the provisions of section 31 of the said Act. It must be stated here that the original section 31 of the said Act is amended by the Act no.9 of 79 on 29.3.79 by adding sub-section 2 to section 31. the whole of the section 31 along with the amendment runs as under:

"31. Restriction on a lineation and sub-division of consolidated holdings. Notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act, nor any part thereof shall be -

(2) Nothing in sub-section (1)-

(a) shall apply to transfer of a holding allotted under this Act of 1978, where the transfer is of the entire holding, not involving any sub-division thereof or to sub-division of a holding allotted under this Act where such sub-division is made to provide for the shares of persons entitled thereto on the death of the owner, and does not create any fragment; or

(b) shall be deemed to have ever applied to a transfer of a holding allotted under this Act, made after the 19th February 1969 but before the date of the commencement of the Bombay Prevention of Fragmentation and Consolidation of Holdings (Gujarat Amendment) Act 1978 (hereinafter referred to as "the said date" where such transfer was of an entire holding not involving any sub-division thereof and the transferee or his successor in interest was occupying or was in possession of the holding so transferred immediately before the said date and had not been entitled to it from such holding before the said date in pursuance of an order of eviction passed by the Collector under sub-section (3) of section 9, and such transfer shall not be and shall be deemed never to have been, void on the ground that it was contrary to the provisions of this section."

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5. If the above provisions of sub-section 2 of section 31 of the said Act are taken into consideration, then it would be clear that if a transfer covered by sub-section 1 happened to have taken place between 19.2.69 and 29.3.79 then provisions of sub-section (1) of section 31 will not apply. It seems that neither the learned Assistant Collector nor the Revenue Department of State of Gujarat has taken into consideration sub-section 2 of section 31 of the said Act while considering the action against the present petitioner. Admittedly the transfer by Koli Kanji Kala in favour of petitioner's father Mohanlal Fulchand Thakkar was approved by the revenue authorities as could be seen from the mutation entry. In the said mutation

entry it has been clearly mentioned that for the transfer of the portion of the consolidation block no.83 Koli Kana had not obtained necessary permission from the Collector for selling that land in favour of Mohanlal Fulchand Thakkar. But merely because of want of permission, it could not be said that said transfer is illegal and invalid in view of the amendment to section 31 of the said Act. At the cost of repetition, it may be said that sub section 2(b) of section 31 protects the transfer which has taken place between 19.2.69 and 29.3.79.

6. Therefore, in the circumstances, the action taken by the respondent no.1 against the present petitioner for the violation of the provisions of section 31 of the said Act (Act of 1947) is illegal and improper. Therefore, on that count alone present petition deserves to be allowed and the orders passed by respondents nos 1 and 2 are liable to be set aside.

7. The transfer in question has taken place on 30.6.75. The notice was issued to the present petitioner on 5.2.83. Thus notice was issued after for more than 7-1/2 years. There is nothing on record to show as to why such a belated action was taken against the petitioner and what prevented the respondent no.1 from taking action promptly. In the case of Ranchhodbhai Lallubhai Patel vs State of Gujarat & ors. reported in 1984(2) GLR 1225 His Lordship S.B.Majmudar (as then he was) has disapproved such a belated action by observing as under:

"Such an action on the part of the authorities exercising powers under the Act for a number of [years and waking up one fine morning after 7 years by issuing notice to the concerned parties ifor showing cause why the transaction entered into by them should not be declared as null and void, has got to be held, on the facts of this case, to be quite unreasonable."

Thus I hold that the order passed against the present petitioner will have to be quashed and set aside on both counts as stated earlier. In the circumstances, present petition is allowed and the order passed by the Assistant Collector in Consolidation Case No. 7/84 and affirmed by the respondent no.2 in Revision preferred against the said order are hereby quashed and set aside. Rule made absolute. Both the parties to bear their own costs.

(S.D.Pandit.J)